IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Bail Appl..No. 7445 of 2007()

PETITIONERS

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1. K.A.RASHEED, S/O.ALIKUNJU,
   AGED 36 YEARS, KARIPPARAMBIL HOUSE,
   EDAPPALLY, ERNAKULAM.

2. MUHAMMAD RENY, S/O.ABDUL AZEEZ,
   AGED 34 YEARS, PANACHIKKAPPARAMBIL HOUSE,
   MUTTAM, THAIKKATTUKARA P.O., ALUVA.

3. NOWFAL.P.A., S/O.MOIDEEN,
   AGED 26 YEARS, PALLICKAL HOUSE,
   EDAPPALLY, ERNAKULAM.

4. AYOOB.M.A., S/O.ABU, AGED 34 YEARS,
   MUPPADATHIL HOUSE, EDAPPALLY, ERNAKULAM.

BY ADV. SRI.SUJITH MATHEW JOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
(FOR S.H.O., IRINJALAKUDA POLICE STATION).

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7445 OF 2007

Dated this the 12th day of December, 2007

ORDER

Application for anticipatory bail. There are four petitioners. The petitioners 1 and 2 are arrayed as accused 3 and 4 in a crime registered alleging offences punishable, inter alia, under Secs.365 and 384 read with Sec.149 of the IPC. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned Public Prosecutor, after taking instructions, submits that the petitioners 1 and 2 are accused 3 and 4 in the crime. Their arrest is necessary. But so far as the petitioners 3 and 4 are concerned, they are not arrayed as accused and they are not required to be arrested in connection with this case now. So far their complicity has not been ascertained. Of course, in addition to the 4 named accused,

some other accused persons are also to be identified. But at the moment, there is nothing to show that the petitioners 3 and 4 are accused in this crime.

3. So far as the petitioners 1 and 2 are concerned, the learned Public Prosecutor opposes the application. The case of the prosecution is that accused 1 and 2, in collusion, had wanted the victim to proceed to a place at Irinjalakuda so that the victim could avail an amount of Rs.10,000/- from the 1st accused. It turned out that this was only a ploy to lead the victim to that place to facilitate the commission of the offence against him. The de facto complainant, along with his friend – the informant, proceeded to Irinjalakuda in a car. There, the informant was asked to sit inside the car. The victim was asked to wait outside the car to receive the money which was promised to be delivered to him there. At that scene, in two cars a crowd of miscreants came. They attacked the victim. They forcibly took him into the car. He was abducted away. The informant promptly lodged a First Information Statement before the police. A crime was registered and the investigation commenced.

4. It is the case of the prosecution that the victim was taken to various places by his detractors. He was allegedly

assaulted by the petitioners 1 and 2 herein as also some of the miscreants who had so abducted him. They had compelled him to sign certain papers. The bone of contention was the disappearance of the brother of the victim who allegedly had some dealings with the petitioners 1 and 2 and others. The victim allegedly was released later. He reported before the police. In his version, he named the petitioners 1 and 2 as two of the persons who had abducted him and had assaulted him. Accordingly, the petitioners 1 and 2 have been arrayed as accused. They are required to be arrested.

5. The Case Diary has been placed before me by the learned Public Prosecutor. I have perused the same. After having considered all the relevant inputs, at the moment, I find no material whatsoever to conclude that the allegations are vexatious and false and that the petitioners are entitled to be granted anticipatory bail.

6. The learned counsel for the petitioners urges that all the petitioners are engaged in the conduct of rent a car business. The de facto complainant, who allegedly is a notorious person involved in many crimes, had taken a car on `rent a car' basis from the petitioners. He had disappeared with the car.

Attempts were made to locate the de facto complainant and the car which he had taken on hire from the petitioners. The petitioners were threatened that the petitioners will also be arrayed as accused if they continue their efforts to trace the de facto complainant or the car. The present implication is only part of such attempt, contends the learned counsel for the petitioners.

7. Having considered all the relevant inputs, I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. in favour of the petitioners. If the petitioners have a grievance against the de facto complainant or the informant, they must make a proper complaint before the police. Needless to say that the police will have to take action on such complaint if the allegations reveal the commission of the cognizable offence. Having not done the same, the contentions urged by way of defence, cannot certainly meet with ready acceptance. Without intending to express any final opinion on the rival assertions, I am satisfied that the petitioners do not at all deserve to be granted anticipatory bail.

8. In the result, this bail application is dismissed; but with

the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge